



**EXPEDITED PROCEDURE – EXAMINING GROUP 2116**

**SEP 09/746,205**

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Charles L. Brabenac	Examiner:	James Trujillo
Serial No.:	09/746,205	Group Art Unit:	2116
Filed:	December 22, 2000	Docket No.:	884.336US1
Title:	PORT-BASED PACKET FILTER		
Assignee:	Intel Corporation	Customer Number:	21186

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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Applicant requests review of the final rejection in the above-identified application. This request is being filed with a Notice of Appeal.

Applicant notes with appreciation that the amended claims from RESPONSE UNDER 37 C.F.R 1.116 filed August 15, 2005 have been entered.

The review is requested for the following summarized reason(s): there is no motivation found of record to combine the cited references to arrive at the present claims.

1. The §103(a) rejection of claims 2, 3, 5, 9 and 12-30 over Graham in view of McKaughan is respectfully traversed for the following reasons:

*(a) There is No Motivation Found of Record to Combine References per M.P.E.P. §2142.*

There is no indication in Graham that Graham is attempting to or desiring to reduce power consumption. In fact, even the Examiner states that Graham is “silent with respect to the power consumption aspect of his particular invention.” Therefore, there is simply no indication in the Action that there is motivation in *Graham* to look to McKaughan to reduce power consumption (or to modify Graham to include a wake-up message or a power-managed computer). And thus, there is no motivation in the record to combine the references to arrive at the present claims.

*(b) Claimed Invention as a Whole Must be Considered in an Obviousness Test*

As shown and described within Graham, the computer 300 of Figure 4 analyzes packets.

The computer system of Graham may be exposed to hackers, because the packets of Graham are analyzed within the memory 303 of the computer 300, and because the packets may be passed to a default application, if there is no known application associated with the packet. Figure 4, element 623 of Figure 6, element 717 of Figure 7, and column 8, lines 25-38 of Graham.

In contrast to Graham, in the present independent claims 2, 12, and 23, the wake-up message is sent to the power-managed host computer “*when* there is a host application associated with the port number” (emphasis added). Further, as claimed in independent claim 2, “when there is not a host application associated with the port number,” the packet is discarded. Generally, the packet may be discarded or rejected before the host computer may receive the packet so that the host computer may be protected from hackers. See, for instance, page 6, lines 16-18, and page 2, lines 15-24 of the present specification.

Considering the claimed invention as a whole, including the problem to be solved, there is clearly no suggestion or motivation in Graham to send “a wake-up message to a host computer.” as recited in independent claims 2, 12, and 23.

*(c) Obviousness May Not Be Found Where a Modification Renders a Device Inoperable*

The addressable memory 303 of Graham includes the software product 304 (packet analysis module 100). Figure 4, and column 8, lines 25-38 of Graham. There is no evidence of record that Graham indicates that the network interface 306 includes (or can include) the software product 304.

McKaughan, on the other hand, refers to powering down the computer except for power to the network interface card, before analyzing packets. See 340 of Figure 3, and see Figure 4.

Modifying the computer 300 of Graham as suggested by the Action would render the packet analysis module 100 of Graham inoperable. By powering down the computer 300 of Graham, the software product 304 would not have power and thus not be able to execute. Even if the network interface 306 of Graham was with power while the computer 300 was powered down, there is no demonstrated indication in a reference of record to modify the network interface 306 (i.e. the packet analysis module 100 of Graham), such that the software product 304 would be moved to be included in the “powered” network interface 306.

Absent such evidence of record, there is no motivation for the proposed modification of the network interface 306.

*(d) Obviousness May Not Be Established Using Hindsight*

Because the computer 300 of McKaughan refers to *powering down* the computer except for power to the network interface card, before analyzing packets, and because Graham is to be *powered on* to analyze the packets and simply can not operate in low power to analyze packets, the only way to combine Graham and McKaughan is through hindsight.

Because of lack of motivation to combine Graham and McKaughan to arrive at the present claims, the rejection under 35 U.S.C. §103(a) cannot stand. Applicant respectfully requests reconsideration and allowance of independent claims 2, 12, and 23, and their dependents.

2. The §103(a) rejection of claims 31-38 over Novoa in view of Graham is respectfully traversed for the following reasons:

*(a) There is No Motivation Found of Record to Combine References to arrive at the present claims*

With regard to independent claim 33, the Action states on pages 8-9 that Graham refers to “dynamic ports are frequently used to provide security [and Graham’s invention] further provides the advantage of improve accuracy in the detection and accounting of traffic data.” The Action concludes that it would have been obvious:

“to one having ordinary skill in the art, having the teachings of Novoa and Graham before them at the time the invention was made, to modify the second filter of Novoa to include the filter as taught by Graham. One of ordinary skill in the art would have been motivated to make the modification in order to improve the accuracy in the detection and accounting of traffic and accurately report and manage such traffic. Further, Graham suggests that such a filter would be useful for providing security in such a network system.”

Applicant respectfully disagrees.

First, the statement that “Graham suggests that such a filter would be useful for providing security in such a network system” is not supported. Column 1, lines 60-64 of Graham specifically recites: “Indeed, dynamic ports are frequently used, for example to provide for security or for improved resource sharing. Accordingly, there is a need to be able to handle dynamic mappings for network traffic.” There is nothing of record to suggest how the “dynamic

ports” of Graham are used to provide for security. Indeed, there is a possibility that the dynamic port may be used as an endpoint in a secure process, without itself being a security filter. Further, column 1, lines 60-64 of Graham does not equate “filter” with “dynamic port.”

Second, there is no demonstrated indication from the Action that Novoa is attempting to “improve the accuracy in the detection and accounting of traffic and accurately report and manage such traffic,” as stated in the Action. Therefore, there is simply no indication in the Action of motivation in Novoa to look to Graham for a suggestion to combine the two references.

*(b) Proposed Modification of Novoa Destroys Stated Purpose of Novoa*

The Examiner proposes to modify the second filter of Novoa (“second filter for security purposes [at] step 414, col. 9, lines 43-53” of Novoa) to include the “filter” as taught by Graham. This modification destroys the purpose of Novoa, which includes having an encryption scheme to discriminate between authorized wake-up packets and unauthorized wake-up packets. (See col. 4, lines 43-45 and col. 9, lines 35-42 of Novoa).

If the proposed modification modifies the “second filter” of Novoa to include the Graham “filter,” this would destroy the stated purpose because Graham’s “filter” does not discriminate between authorized wake-up packets and unauthorized wake-up packets. In fact, Graham identifies an application based on packet data using an application port mapping table. If, for example, the system of the proposed combination of Novoa and Graham received a packet associated with an installed universal application (assuming the packet made it through the “first filter”), the system would be woken up, and there would be no discrimination between authorized wake-up packets and unauthorized wake-up packets as taught by Novoa. The proposed combination destroys the purpose of Novoa, and is thus impermissible.

In specific response to comments in the Advisory Action, if the proposed modification modifies the “second filter” of Novoa to “include” the filter of Graham, *without replacing Novoa’s second filter*, this appears to *not* be a “modification” of the second filter, but rather is a proposed addition of a third filter to Novoa to “improve the accuracy in the detection and accounting of traffic and accurately report and manage such traffic.” Applicant is simply unable

to find anything in the record that demonstrates supported motivation to include yet another "security filter," specifically the packet analysis module of Graham, into Novoa.

Because obviousness may not be established without motivation to combine the references and the proposed modification would destroy the stated purpose of Novoa, the Action has not established a *prima facie* case of obviousness for independent claims 33 and 36 and their dependents.

Please also see further detailed Arguments of Record on pages 8 to 19 of RESPONSE UNDER 37 C.F.R 1.116 filed August 15, 2005.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date Sept. 14, 2005

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 14TH day of September 2005.

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